

Case Number 10-cv-00379

STIPULATED MOTION FOR REMAND TO STATE COURT

Plaintiff M&I Marshall and Isley Bank ("Plaintiff"), by its attorney, John Leary, Ruder Ware, L.L.S.C., and Defendant United States of America ("United States"), by its attorneys, Stephen P. Sinnott, United States Attorney for the Western District of Wisconsin, and Megan McDermott, Assistant United States Attorney for said District, hereby move this Court to order that this matter be remanded to state court with all parties to bear their own costs and fees in connection with the removal and remand. Grounds for this motion are as follows:

1. A civil action was commenced in the Circuit Court of St. Croix County, in the State of Wisconsin, in which M&I Marshall and Isley Bank is the plaintiff, and the United States of America, on behalf of the United States Small Business Administration, is one of the defendants. Said action has been designated as Case Number 10-CV-629.

Motion granted
per
8/4/10

2. Among other things, Plaintiff's Complaint sought to foreclose the United States' interest in real property of Kamlesh J. Bhakta. The Complaint does not seek to foreclose any interest in personal property in which the United States holds an interest. Defendant United States disputes certain aspects of Plaintiff's claimed priority.

3. Plaintiff and Defendant United States have resolved this dispute and hereby stipulate that Plaintiff's mortgage is senior to Defendant United States' mortgage only with respect to the amounts due under Note #40404, exclusive of prepayment penalties, late fees, default interest or other default charges. As of July 26, 2010, Plaintiff has priority to the first \$237,288.96 of sale proceeds, with daily interest of \$36.24 to accrue up to the date of judgment, as well as costs and reasonable attorney fees incurred in prosecuting this action.

4. Plaintiff stipulates that it does not have priority over the United States with respect to any amounts due under M&I Note #17440 and will not apply any funds to this note to the detriment of the Small Business Administration's intermediate lien position.

5. In the event that this matter proceeds to a sale, the proceeds of sale shall be paid first to Plaintiff up to the amounts specified in Paragraph 3, then to the United States up to the amounts due under SBA's mortgage, then to Plaintiff up to the amounts due under Note #17440.

5. Any judgment in this matter will reflect the parties' lien position as set forth herein and shall further include the United States' right to redeem the property for 1 year following confirmation of sale.

6. A plaintiff has thirty days following removal to move for remand under 28 U.S.C. § 1447(c). Although this statute refers to remand for procedural or jurisdictional defects, the Supreme Court has made clear that district courts retain some discretion to remand in situations in which Congress was silent. *See Carnegie Mellon University v. Cohill*, 484 U.S. 343, 353-54 (1988). For example, in the context of pendent state law claims, district courts have discretion to remand claims based on various considerations including economy and convenience. *Id.* at 356-58.

6. Because Plaintiff and Defendant United States have resolved their priority dispute and litigation regarding these issues will not be necessary, Defendant United States agrees that the district court has discretion to remand this matter to state court in the interests of economy and convenience.

Dated this 3rd day of August, 2010.

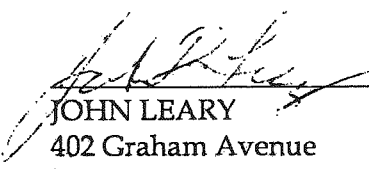
Respectfully submitted,

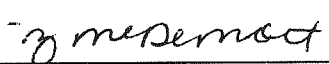
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